# The Solicitors' Journal

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## Current Topics.

### Administrative Quasi-Legislation.

THE recent apology by the HOME SECRETARY for what he admitted was a grave defection in failing to place before Parliament the regulations constituting the National Fire Service has revived interest in that most acute of modern legal problems, that of delegated legislation. The HOME SECRETARY's important statement on 18th May as to the Government's proposal that a Parliamentary committee should be appointed to check this legislation, with Sir CECIL CARR as its legal adviser (*ante*, p. 188) was a welcome step forward. In connection with this subject, our attention has been drawn to an article in the *Law Quarterly Review* for April, 1944 (at p. 125), by R. E. MEGARRY on "Administrative Quasi-Legislation," where an important aspect of this thorny problem is exhaustively and brilliantly analysed. The writer gave the "Practice Notes" of the War Damage Commission as an example of what he called administrative quasi-legislation, i.e., "announcements by administrative bodies of the course which it is proposed to take in the administration of particular statutes." He called these particular notes "shining examples of official helpfulness." On the other hand, in the case of quasi-legislation like the intimation by the Treasury to the National Federation of Property Owners that in spite of the exclusion of damage from wear and tear from compensation payable under s. 2 (1) (*b*) of the Compensation (Defence) Act, 1939, payment would nevertheless be made for fair wear and tear where the compensation rent had been assessed strictly in accordance with the Act, the change was "as regrettable in form as it was welcome in substance." Another instance of a type of quasi-legislation was the HOME SECRETARY'S announcement in the Commons in July, 1942, that after the case of *Deane* v. *Edwards* (1941), 3 All E.R. 331, in which the Court of Appeal expressed strong disapproval of insurance companies which pleaded a workman's acceptance of compensation as a bar under s. 29 of the Workmen's Compensation Act, 1925, to a claim for damages at common law, an agreement had been reached with employers' organisations and insurance companies, that they would not raise the defence where the common law proceedings were started within three months of the accident, thus rendering legislation "unnecessary." Mr. MEGARRY, while not ignoring the grave constitutional objections to this type of quasi-law, emphasises that "a system under which the practitioner may have to search Hansard, the Stationery Office list of official publications, and the weekly law papers . . . will commend itself to few." He suggests a uniform official method of publication under some title such as "Administrative Notifications and Decisions," classified and divided according to the subject-matters. The harassed practitioner will heartily agree.

### Company Law Amendment.

THE eighteenth day of the hearing of evidence by the Company Law Amendment Committee on 12th May was occupied with the consideration of the recommendations put forward by the Association of Certified and Corporate Accountants, and by the London Chamber of Commerce. The former body contended that, since previous committees considered the subject, the position of shareholders had changed in a great many cases "from a responsible proprietorship to mere dividend recipients, or investors seeking capital accretion, and the controlling and functioning of companies now resides, in a vast majority of cases, with the directors." Auditors, they stated, should have some responsibility for the prospectus, as their names had to appear in it. In order to prevent what the Association considered unnecessary winding up of a company on the ground of deadlock, they suggested that a referee or arbitrator should be compulsorily appointed by the court failing agreement between the parties. They saw no reason why a private company should not be compelled to publish its accounts in like manner to a public company, and recommended that charges to directors and members of a private company with controlling interests should be voidable against the company's liquidator and creditors. In view of the difficulty of determining in some cases whether a charge is registrable under s. 79 (e.g., a solicitor's lien upon the title deeds of the company's real property, or a charge upon a bond given to secure a loan), it was recommended that s. 79 should require the registration of all mortgage charges or liens created by a company. The question put by COHEN, J., on this point was: "Are you suggesting that every time a solicitor does any work a solicitor's lien ought to be registered for work done as a solicitor?" They further recommended that in the case of nominee shareholdings the identity and other particulars of the beneficial owner or owners should appear in the register under the name of the nominee. The profit and loss account, the Association recommended, should contain separate statements of a number of items, including directors' remuneration and expenses, depreciation, debenture interest, and a number of other items. Among the items which they recommended should be disclosed in the balance sheet were specific and general reserves. With regard to the declaration of solvency, they suggested that it should be based on an annexed auditors' report and audited balance sheet and profit and loss account made up to within thirty days of the date of the declaration.

### The London Chamber of Commerce.

THE memorandum of the London Chamber of Commerce, considered on 12th May by the Company Law Amendment Committee, recommended that private companies be restricted as to the issue of debentures, by having to file a balance sheet so long as the debentures were outstanding, provided that this did not apply to a specific charge or mortgage. They further recommended that the question of the abolition of the obligation to attach a distinctive number to every share should be reconsidered, and in lieu of such an obligation there should be a clause making the distinctive numbering of shares optional in the case of fully paid shares after the issue of the allotment letter or the first share certificate, on the lines of a Bill prepared in 1929 by representatives of the Stock Exchange, London, and the Chartered Institute of Secretaries, and approved by the British Bankers Association, The Law Society, the Institute of Chartered Accountants, and many of the other leading professional organisations. They also proposed that the profit and loss account showing the net trading profit for the year drawn on accepted accountancy principles be included as one of the documents to be attached to the balance sheet, circulated to the members before the meeting, and filed with the Registrar of Companies under s. 110. Among other recommendations were the following: (1) The definition of subsidiary company should be extended to cover any company controlled, either directly or indirectly, by the parent company; (2) with the declaration of solvency the directors shall file a report of the auditors of the company upon the financial position of the company and that the liquidator shall, within three months of his appointment, submit a full statement of affairs to the creditors, and shall convene a meeting of creditors and submit it; (3) every person who becomes a member of a company, if he is not the beneficial owner of the stock or share in respect of which he is registered as a member, shall within seven days thereafter furnish to the company a statutory declaration containing the full names, address, nationality, former nationality and description of the beneficial owner of the said stock or share. This would not apply to a personal representative of a deceased person, trustee in bankruptcy, committee of a lunatic or a trustee of a settlement of property limited in trust for any persons by way of succession,

in which cases the member could within seven days furnish to the company particulars in writing of the capacity in which he held the stock or share and the date and description of the grant, order or settlement under which he was appointed or derived his authority to act. In any case the particulars would have to be entered in the share register and annual return of the company.

## Furniture Prices.

THE Board of Trade may not unnaturally have felt some trepidation in launching on 4th July the General Furniture (Maximum Prices and Charges and Miscellaneous Provisions) Order, 1944. Their feelings, however, cannot equal the alarm and despondency which the mere sight of its twenty-six pages, including two fearsome-looking schedules (one eleven pages in length) will inspire in the furniture trade. And yet, as Mr. DALTON indicated some time ago, the ramp in furniture had to be controlled, however difficult the task might seem, and the length of the order is obviously due to its subject's " infinite variety." It completely replaces the General Furniture (Maximum Prices, Maximum Charges and Records) Order, 1942 (No. 2402), and the General Furniture (Maximum Prices, Maximum Charges and Records) Order, 1943. According to the explanatory note which occupies a page at the end of the order, it seems that the Board regard the most important new provision of the order as being that which fixes ceiling prices in cash for manufacturers' and distributors' sales of certain types of new and second-hand furniture which are in common use. The length of the first schedule is accounted for by the fact that it contains descriptions of these types. The classifications are according to the grades of wood, sizes, number of doors and drawers and other matters, and the result is formidable, but not entirely unintelligible. No doubt the Board considers that sufficient provision is made for furniture which has a special value as antiques in the definition of second-hand furniture, which excludes " second-hand furniture which it was established was made not less than one hundred years before the date on which that second-hand furniture is being offered for sale." The control in the previous orders of manufacturers' prices for new furniture (which includes reconstructed furniture) on the basis of costs of production and sale plus 6 per cent. and of distributors' prices for new and second-hand furniture on the basis of a 50 per cent. margin are retained, but the prices are now subject to the new ceiling prices set out in the first schedule. In accordance with the well-known principle of economics that maxima soon become minima, it is to be expected that the " cost plus " basis of assessing manufacturers' prices may gradually be discarded in favour of the ceiling price, and none will regret it, as it is not easy to prove a criminal offence by means of allegations as to costs which are based solely on the opinions of expert witnesses and which will inevitably be contradicted by the opinions of experts of equal standing. It will also be observed that this is the order which now fixes maximum prices for second-hand utility furniture and not the Utility Furniture (Maximum Prices and Maximum Charges) Order, 1944 (No. 766), art. 8. No specific provision is made for a wholesaler's margin, maximum prices being fixed for distributors, whether wholesalers or retailers. The maximum price provisions do not apply to a sale of furniture by tender for which a licence has been granted under the Sales by Auction (Control) Order, 1944 (No. 767), art. 21. The first-hand price is retained as the ceiling price for second-hand furniture which is not scheduled furniture, and there is a simplified definition of " first-hand price." Further changes are that notices as to maximum prices must be exhibited by persons selling to retail customers ; and the charge for repairs must not exceed the actual cost of material and direct labour plus 125 per cent. of the direct labour cost. The order comes into operation on 28th August, 1944.

## Further Orders.

AT about the same time as the making of the General Furniture Prices Order four further orders relating to furniture were issued. The Utility Furniture (Maximum Prices and Charges) Order, 1944 (No. 766) (4th July), replaces No. 2589 of 1942 and No. 363 of 1943. Maximum prices for new utility furniture are unchanged, but for second-hand utility furniture the maximum prices are now to be fixed by the General Furniture Prices Order (No. 765). Notices as to maximum prices must now be exhibited by distributors selling to retail customers. The structure of the order generally is brought into conformity with the General Furniture Prices Order and it comes into force on 28th August, 1944. The Sales by Auction and Tender (Control) Order, 1944 (14th July), replaces No. 58 of 1943, and it also comes into operation on 28th August, 1944. The few important changes it effects are (1) furniture scheduled in the General Furniture Prices Order may not be sold at auction at a price exceeding the ceiling price set out in that order ; (2) such scheduled furniture may not be sold by auction as part of a lot which includes other goods (this does not apply to a suite of scheduled and other furniture if the suite is sold at a price not exceeding the total of ceiling prices of the scheduled furniture) ; (3) a lot comprising furniture the sale price of which exceeds £1 may not be sold by auction except to a person producing his identity document and may not be sold by auction to the agent of a trader unless he produces a letter of authority from his principal. The auctioneer must keep a record of the particulars in the identity document. The General Furniture (Control) Order, 1944 (No. 768) (14th July), is a new eleven-page order which also is to come into operation on 28th August, 1944. It controls the acquisition and control of furniture by manufacturers and distributors. The main new obligations imposed on these traders are listed in an explanatory note and relate to the keeping of records, the attaching of explanatory tickets to new and second-hand furniture, the production of identity documents by vendors of second-hand furniture, the selling of scheduled furniture in a proper state of repair, and other matters. Another important part of the order prohibits persons (except under licence) from letting out furniture on hire in the course of any business : (1) unless they were doing so in the ordinary course of their business during the six months immediately before the order ; and (2) unless they have notified that fact to the Central Price Regulation Committee ; and (3) at a charge exceeding their customary charge during that period. Other provisions prohibit, with some exceptions, the publishing or exhibiting of advertisements in the course of any business, for the supply of any furniture unless the advertisements contain the names of the owners of the furniture and the addresses where the furniture can be seen. Finally, the Furniture (Control of Manufacture and Supply) Order, 1944 (No. 769) (17th July), came into force on 1st August, 1944, replacing and re-enacting with a few minor amendments seven orders relating to domestic, metal, and hearth furniture.

## Cost of Works Payments.

A DEPUTATION consisting of a number of representatives of bombed towns recently expressed to the CHANCELLOR OF THE EXCHEQUER its dissatisfaction with the present position as regards compensation for war damage to business premises. Reports of this meeting which have appeared in the Press have given rise to certain misunderstandings. Sir JOHN ANDERSON has therefore authorised the following statement : " The deputation suggested that damaged business premises did not under present arrangements receive the same treatment as damaged houses, since houses were treated under a Treasury direction which enabled a cost of works payment to be made for all houses built after 1914, and for any house built before then which at the time of damage was structurally as good as new and was reasonably equal in design, layout and amenities to similar houses built after 1914. They asked for a similar direction for business premises. Sir JOHN ANDERSON explained that the Treasury direction relating to houses was issued mainly for administrative reasons because of the very large number of such properties, and also because of the strong presumption that the very great majority of those erected in recent times were good buildings. Business premises which were good buildings, i.e., which were structurally sound and adequately equipped by modern standards for their purpose and did not represent a wasteful use of the site, should qualify for cost of works payments under the test prescribed in s. 7 of the War Damage Act, 1943, and the War Damage Commission were satisfied, on present evidence, that the test was producing the intended result. The War Damage Commission were quite ready to consider any individual case provisionally classified by them as qualifying for a value payment where the owner had good reason to think such classification wrong. The Chancellor therefore was satisfied that there was equal treatment, and no need for any Treasury direction for business premises."

## Recent Decisions.

In *Young* v. *Bristol Aeroplane Co., Ltd.*, on 28th July, the Court of Appeal (THE MASTER OF THE ROLLS, MACKINNON and LUXMOORE, L.JJ., LORD GODDARD and DU PARCQ, L.J.) held that (1) the powers of the Court of Appeal when sitting in full were no greater than the powers of a division sitting with three members ; (2) the only cases in which the court was not bound to follow its own previous decisions were (*a*) where there were decisions which were inconsistent with one another ; (*b*) where a previous decision which they were asked to follow had been overruled by the House of Lords ; and (*c*) where a decision which they were asked to follow had been obviously given *per incuriam* without the attention of the court having been drawn to the relevant authorities.

In *Court Line, Ltd.* v. *The King* on 3rd August (*The Times*, 4th August), where a ship which was requisitioned by H.M. Government was torpedoed and damaged by an enemy submarine on 18th July, 1942, and, on 1st August, 1942, sunk and was totally lost with her cargo while in tow of two tugs and escorted by two warships, TUCKER, J., held that (1) there was no actual total loss on 18th July, 1942, within s. 57 (1) of the Marine Insurance Act, 1906 ; (2) that on the facts there was no abandonment of the vessel on 18th or 19th July, 1942, within s. 60 (1) of the 1906 Act ; (3) that it had not been established that there was a constructive total loss on 18th or 19th July under s. 60 (1) or s. 60 (2) ; (4) that there was no frustration of the charterparty on either of those dates ; and (5) that there was no repudiation or abandonment of the contract by the suppliants ; and that therefore hire was payable under cl. 25 of the charterparty " up to and inclusive of the day of loss "—in that case 1st August.

# A Conveyancer's Diary.

## Public Rights of Way.

UNDER s. 26 of the Local Government Act, 1894, it is the duty of the rural or urban district council " to protect all public rights of way " and to prevent so far as possible the stopping or obstruction of any such way in their district or an adjoining district " where the stoppage or obstruction thereof would in their opinion be prejudicial to the interests of their district." A further subsection gives the district council power to institute or defend any such legal proceedings as they may deem expedient for these purposes. But in practice the district council is often not the body before whom questions as to the existence of public rights of way arise in the first instance. Such questions no doubt interest the large class of persons who go for walks in the country : but that class is too wide to take any very acute interest in any particular right of way. It is the people who live and work near enough to the *locus in quo* to want to use the way frequently who are likely to take a strong enough interest in the question to wish to press it. Their natural appeal is to their nearest local authority, the parish council, many of which bodies have latterly been active in these matters. The parish council are entitled, under subs. (4) of the section cited above, to " represent " to the district council that a right of way within the district or an adjoining district has been unlawfully stopped or obstructed and it is then the duty of the district council " to take proper proceedings accordingly " unless satisfied that the allegations in question are incorrect. If the district council does not take such proceedings, the parish council may petition the county council, and upon such petition the latter may resolve to transfer to itself the duties and powers of the district council.

In these circumstances the parish council (or its appropriate committee) may well find itself in the position of having to consider the complaint of an inhabitant that a public way in which he is interested has been stopped up, and to decide whether there is or is not a *prima facie* case. There does not seem to be any way in which the parish council can be compelled to undertake such a function if it does not wish to do so, since the section does not impose a duty on it. The parish council is often very ready to act in these matters : if it will not, the complainant can go to the district council, upon which the section casts a duty which is no doubt enforceable by mandamus. But if the parish council will act at the first stage it is convenient that it should do so.

The complainant may come forward to say that a particular way which has notoriously been used by the public until lately has recently been blocked. In such a case the questions are fairly straightforward. There is clear and fresh evidence of user, which may either be direct evidence of dedication or may lead to a presumption of dedication through twenty or forty years' user under the Rights of Way Act, 1932. The council must, of course, inquire into the nature of the user and for particulars tending to show that it was referable to dedication and not to some licence or other cause. But, in such a case, their task is relatively straightforward.

A more difficult question arises if the purpose of the complainant is to revive a right of way which has fallen into disuse. Such a proposal may well arise out of a campaign for the re-establishment of public rights of way conducted by the parish council itself. In such a case there is necessarily no good or fresh evidence of user. Perhaps the *locus in quo* may show traces of having once been the site of a way ; for instance, there may be remains of a continuous hedge along one side of it. But at the same time there may be no evidence that the way was a public way. Moreover, there may easily be positive evidence of long disuse, as, for instance, the presence in the site of the way of trees fifty years old.

In such a case s. 1 of the Rights of Way Act, 1932, seems to be of no assistance at all. The combined effect of subss. (1), (2) and (6) is that certain presumptions of dedication are raised by evidence of twenty or forty years user, but the periods of such user must be those " next before the time when the right of the public to use the way shall have been brought into question." The whole procedure under s. 1 is thus excluded in the absence of evidence of recent user. Recourse must therefore be had to the ordinary rules of common law, assisted, on questions of evidence, by s. 3 of the Act of 1932. The common law rule is that it is dedication which makes a public right of way ; and once dedication is shown, desuetude cannot reverse it. Quarter sessions have powers to stop up highways under the Highway Act, 1835, and there are modern powers under the Town and Country Planning Acts and the Housing Act. Various public bodies have also like powers in war-time. But, with these quite abnormal exceptions, the rule is that, once dedicated, a public right of way remains dedicated. The crux will thus be for the complainant to show that there is enough evidence of former use to justify an inference that the way was once dedicated as a public highway, and for what purposes it was so dedicated. In such a case it appears still to be necessary, in spite of s. 1 of the Act of 1932, to rely on the evidence of old inhabitants, if such is available. The court is also given a wide power to look at documents, under s. 3 of that Act, which provides : " Any court or other tribunal shall, before determining (*a*) whether a way upon or over land has or has not been dedicated as a highway, or (*b*) the date upon which such dedication, if any, took place, take into consideration any map, plan or history of the locality or other relevant document that is tendered in evidence, and such weight shall be given thereto as the court or tribunal consider justified by the circumstances, including the antiquity of the tendered document, the status of the person or persons by whom it was made or compiled and the custody in which it has been kept and from which it is produced."

My impression is that the laity tend to misunderstand and underestimate the difficulties which face the local authority in a claim of this sort. There is a landowner, the prospective defendant, whose title to the land is not capable of dispute. If a claim to a public right of way over part of his land is to succeed, the onus is entirely on the person prosecuting the claim (the district council if it comes to litigation) to establish as against the owner that the fee simple is subject to this alleged incumbrance. If there is evidence of recent user, s. 1 of the Act may shift the onus. But in the case of a disused way that section does not affect the matter. In such a case the oral evidence, though it can scarcely avoid being called, will quite possibly not be definite enough to justify any firm inference. One must then fall back on the old maps. If they do not show the way, the claim is probably wrong. But if they do show a way, it is still necessary for the local authority, or the complainant, to establish that the way thus marked was indeed a public right of way. The map may easily be obscure on such a point, and if so, it will be essential for the local authority, if it desires to pursue the matter, to show by other means the public nature of the user. Such a programme will be by no means easy, and thus there can, in practice, be cases where a dedicated way ceases in effect to be a public way merely because the original dedication cannot be proved. But since lapse of time does not undo dedication, a district council which decides not to fight can always reopen the dispute if other evidence helpful to it is later found.

# Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

## Service of Writs and Summonses.

Sir,—In these days, when not one correctly addressed letter in ten thousand fails to be delivered by the Post Office, it is expedient to abolish the archaic requirement, and often the annoyance, of personal service, especially as in the majority of cases the process server effecting personal service, glibly swearing he has served " the defendant," cannot possibly identify that the person to whom he delivers the process is, in fact, the named defendant. Only the Divorce Court requires service identity to be proved.

Here is a simpler alternative procedure.

On issuing writ or summons the plaintiff's solicitor delivers a service copy to the court with a stamped envelope addressed to the defendant, accompanied by the solicitor's certificate of correct postal address on the envelope and adding the facts on which his certificate is based.

The court then posts the envelope containing the process with a slip *inside* addressed to the Postmaster-General that if the envelope is not delivered it is to be returned to the issuing court.

If not so returned by the Post Office within the prescribed time, service shall be deemed to have been effected on the second day after posting.

In the few exceptional cases where defendant can prove that he did not receive the envelope and can swear to a good defence the court should have power to set aside any judgment entered in default of appearance.

Of course, the solicitor who cannot certify the defendant's postal address must then effect personal or substituted service, but those cases would be so very rare as not to justify the requirement of the personal process server in every case.

London, E.C.2. CHARLES L. NORDON.
8th August.

# Books Received.

**The Law of Neutrality.** Notes and Analysis. Prepared by S. N. GRANT-BAILEY, of the Middle Temple, Barrister-at-law, for University Correspondence College. 1944. pp. xv and (with Index) 56. London : Stevens & Sons, Ltd. 5s. net.

**Lewin on Trusts.** 14th Edition. Third Cumulative Supplement (to March, 1944). By JOHN BURKE, of Lincoln's Inn, Barrister-at-law. 1944. pp. vi and 26 (with Index). London : Sweet and Maxwell, Ltd. 3s. net.

**Design of Dwellings.** Report of the Design of Dwellings Sub-Committee of the Central Housing Advisory Committee appointed by the Minister of Health and Report of a Study Group of the Ministry of Town and Country Planning on Site Planning and Layout in relation to Housing. 1944. London : H.M. Stationery Office. 1s. net.

# Landlord and Tenant Notebook.

## Agricultural Holdings: Security of Tenure.

IN *Land Settlement Association, Ltd.* v. *Carr* (1944), 60 T.L.R. 488 (C.A.), the defendant, tenant of an agricultural holding let "from 1st October, 1939, to 29th September, 1940, and thenceforward from 30th September, 1940, for the term of 364 days and thereafter for successive periods of 364 days as from 29th September, 1941," and determinable "by either party at any time during the currency of the said term or any successive period giving to the other three calendar months' previous notice to quit in writing," made a strenuous but unsuccessful effort to establish that the security of tenure provisions of A.H.A., 1923, avoided a notice to quit so given.

There are two such provisions, the first of which, to be found in s. 23, obviously could not apply as its scope is limited by the opening words of the first subsection: "In the case of a tenancy of a holding for a term of two years or upwards." The other, s. 25 (1), of which the important words are: "Notwithstanding any provision in a contract of tenancy to the contrary, a notice to quit a holding shall be invalid if it purports to terminate the tenancy before the expiration of twelve months from the then current year of tenancy" was relied upon by the tenant, and in the course of the argument not only the interpretation section of the Act, but also such *prima facie* extraneous enactments as L.P.A., 1925, s. 1 and s. 206 (xxvii), the writings of Coke and Blackstone, and an early seventeenth century decision, were invoked.

The implication from the words "*current* year of tenancy," somewhat briefly referred to by Scott and Luxmoore, L.JJ., in dismissing the defendant tenant's appeal (against a judgment for possession), might well be considered conclusive in itself. It was, however, used rather as an additional ground: "There was no tenancy year which was 'current'"—"it would be impossible to give a notice to terminate the tenancy at the end of the then current year because there is no such period fixed by or ascertainable under the agreement," and argument centred mainly round the question whether the defendant had held under a "contract of tenancy" as defined in the interpretation section, s. 57, which was, of course, a condition precedent to his bringing himself within the contracting-out provision of s. 25 (1) cited above.

The definition runs: "a letting of or agreement for letting land for a term of years, or for lives, or for lives and years, or from year to year." The second and third alternatives could clearly not apply, and of the first and fourth the former was the more attractive. The contention that the agreement created a term of years was based in the first place on a passage from Blackstone, II: "An estate for years is a contract for the possession of lands or tenements for some determinate period . . . If the lease be but for half a year, or a quarter, or any less time, this lessee is respected as a tenant for years, and is styled so in some legal proceedings; a year being the shortest term which the law in this case takes notice of." No doubt the other side seized upon the "some" and the "in this case" qualifying "legal proceedings"; and MacKinnon, L.J., observing that Blackstone was dealing with "estates less than freehold" and was pursuing his usual method of specifying exhaustive categories, considered that the words "a term of years" in s. 57 of A.H.A., 1923, had no reference to this analysis. Scott, L.J., was at pains to examine passages in Coke upon Littleton referred to by Blackstone. In s. 67 we find: "Also, if tenements be let to a man for term of halfe a yeare, or for a quarter of a yeare . . . in this case, if the lessee commit waste the lessor shall have a writ of waste against him, and the writ shall say *quod tenet ad terminum annorum*"—so far Coke might just be said to support the argument, but the passage proceeds: "but he shall have an especiall declaration upon the truth of his matter, and the count shall not abate the writ, because he cannot have any other writ upon the matter." While the comment itself explains: "This is the reason that in this case of half a yeare the words of the writ shall be without change . . . and the pleader must make a speciall declaration according to his case . . ." Coke then points out that in the case of tenants for years waste was a statutory, not a common law, offence: the Act (which was the Statute of Gloucester, 6 Edw. 1, c. 5, used the plural: term of *years*). Thus, said the learned lord justice, it was plain that even at that period of our law nothing short of a year was regarded as "really" a "term of years," the attribution of the name being a "procedural fiction."

In other words, the ancient writings were concerned with practice and pleading on this point, not with substantive law, and litigants were authorised to call a six months' tenancy a term of years much in the same way as certain establishments are permitted under the Defence Regulations to refer in certain circumstances to margarine as "butter."

There was, indeed, an ancient authority which supported the landlords' contentions: *The Bishop of Bath's* case (1605), 3 Co. Rep. 323; this was cited by Luxmoore, L.J. The facts of this case (to which I recently had occasion to refer in connection with the *Contra Preferentem* rule: 88 SOL. J. 208) were that diocesan lands were let to a widow and her son for sixty years, the lessor having a right of re-entry if both died within that period; his successor granted a reversionary lease during the life of the surviving grantee, to commence after the first term had expired or determined by death, surrender or forfeiture. The whole question in the action was whether the second term was sufficiently described so as to fulfil the requirement of certainty; it was held that it was, but in the course of its judgment the court embarked upon digressions, as was then usual, resolving, *inter alia*, "If a man leases his land for years, it is a good lease for two years, because it shall be taken good for such a number with which at least the plural number will be satisfied and that is with two years." A period of 364 days, Luxmoore, L.J., pointed out, followed by another such period, did not amount to two years.

A further argument was based on the definition of "term of years absolute" in L.P.A., s. 205 (1) (xxvii), which begins "means a term of years . . ." and concludes ". . . and in this definition the expression 'term of years' includes a term for less than a year, or for a year or years and a fraction of a year or from year to year." The argument was held, by Scott, L.J., to be fallacious for three reasons: s. 205 (1) commences: "In this Act . . ."; A.H.A., 1923, has its own interpretation section, repeating, in this case, the definition of "contract of tenancy" given by A.H.A., 1908; and A.H.A., 1923, being a special, but L.P.A., 1925, a general, Act, the maxim *specialibus generalia non derogant* applied.

It appears also to have been urged that there were expressions which showed that the parties contemplated that the tenancy would last more than one year. This expectation was held to be irrelevant, and *Doe d. Plumer* v. *Mainby* (1847), 10 Q.B. 473, was cited. In that case a yearly tenancy commencing Michaelmas, 1845, was granted by an agreement which made rent payable on Lady Day and Michaelmas, except the *last half-year*; authorised the landlord or incoming tenant in the *last year* to enter on 1st May to make fallows, etc.; and the tenant to use the barns for stacking, etc., the crops of *the last year* till next 1st May. Despite the words italicised, a notice to quit given on 26th March, 1846, for 29th September of the same year was held to be effective. (It is perhaps curious that no one seems to have suggested that the notice was late, six months meaning two customary quarters: exactly similar notices were held invalid in *Right d. Flower* v. *Darby* (1786), 1 T.R. 159, and *Morgan* v. *Davies* (1878), 3 O.P.D. 260.)

# Our County Court Letter.

### Recovery of Tithe Redemption Annuity.

IN *Tithe Redemption Commission* v. *Millman*, at Barnstaple County Court, an application was made under the Tithe Act, 1936, s. 16, for the appointment of a receiver of the rents of certain land owned by the respondent. The case for the respondent was that an order against himself was already in existence, but he had not had a chance to pay. His Honour Judge Thesiger observed that the respondent was under a misapprehension. The receiver would collect the rent from the respondent's tenant, and, after deduction of the amount due for tithe, would remit the balance to the respondent. An order was made as asked.

### Sub-Tenant or Paying Guest.

IN *J. Warriner, Ltd.* v. *Taylor*, at Thame County Court, the claim was for possession of a house let by the plaintiffs to a Colonel Woods. The case for the plaintiffs was that the defendant, as a sub-tenant of a furnished house, was not entitled to remain in possession. The defendant denied that she was a sub-tenant. Her case was that she was a paying guest, and that Colonel Woods had an intention to return. His Honour Judge Donald Hurst gave judgment for the defendant. This decision has been upheld by the Court of Appeal (Lord Greene, M.R., MacKinnon, L.J., and Vaisey, J.) on the ground that there was ample evidence to support the finding of the county court judge.

### Land for Road Widening.

IN *Aberystwyth Corporation* v. *Jones*, at Aberystwyth County Court, the claim was for possession of a piece of land in Moor Lane. The plaintiffs' case was that by a reversionary lease, dated the 11th December, 1867, and made between the plaintiffs of the first part, William Ashley of the second part and Thomas Bubb of the third part, the land had been demised for a term of thirty-four years from a date in 1907. This term had expired on the 20th December, 1941. The ground rent had always been paid—latterly by a daughter of the said Thomas Bubb. The defendant used the land as a builder's yard, and had refused to give up possession, although a written demand had been made on the 2nd June, 1944. The land was now required for road-widening. The defendant's case was that he had been the owner of the land since 1929, his predecessor in title having been one Watkins. No ground rent had been paid for innumerable years. His Honour Judge Temple Morris, K.C., observed that the latter circumstance did not make the land freehold. An order was made for possession in twenty-eight days.

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Mr. F. Baildon Wright, retired solicitor, of Cricklewood, left £2,049, with net personalty £1,970.

# To-day and Yesterday.

## LEGAL CALENDAR.

**August 7.**—Early in the reign of James I a more than usually destructive flood inspired a scheme for draining part of the Fen Country. The King took a particular interest in it and gave instructions that he was to be informed of "any mutinous speeches which might be raised concerning this business so generally intended for the public good," for opposition was anticipated. The four undertakers, among whom was Lord Chief Justice Popham, began operations on the 7th August, 1605, proposing to drain 351,242 acres in seven years, accepting in return 130,000 acres "out of the worst sort of every particular fen." But grievances were raised and the work had to be discontinued owing to the obstruction encountered "by bringing turbulent suits in law, as well against the commissioners as those whom they employed therein, and making of libellous songs to disparage the work."

**August 8.**—On the 8th August, 1780, "at the assizes for the county of Lincoln was tried a cause between the Hon. John Manners and Alderman Sanser for pulling down the market cross at Grantham and converting the same to his own use. It appeared that this cross had stood beyond memory and was claimed as part of the Manor of Grantham by the plaintiff. The defendant set up his right to take it down by a pretended grant from Charles I or II which gave the Corporation a market and three fairs; but the jury, which was special, found for the plaintiff with £40 damages."

**August 9.**—On the 9th August, 1661, Evelyn recorded: "I dined at Mr. Palmer's in Gray's Inn, whose curiosity excelled in clocks and pendules, especially one that had innumerable motions and played nine or ten tunes on the bells very finely, some of them set in parts, which was very harmonious. It was wound up but once a quarter. He had also good telescopes and mathematical instruments, choice pictures and other curiosities. Thence we went to that famous mountebank Jo. Punteus." Dudley Palmer had become an associate of the Bench of Gray's Inn two years earlier. He was one of the founders of the Royal Society.

**August 10.**—At No. 44, High Holborn, Mr. Paas carried on business as a manufacturer of the brass instruments used by bookbinders. Among his customers was a young man named James Cook who had a workshop over a milkman's cow-house in a yard off Wellington Street in Leicester. In May, 1832, he arrived in the town to collect some debts, put up at the "Stag and Pheasant" and set out on his rounds. In the course of the day he told someone that he was going to call on Cook in the evening; he was never seen again. That evening a great fire was seen to be blazing in Cook's workshop, but as his trade sometimes demanded considerable heat no suspicions were aroused, though some surprise was caused when, dropping in for a drink and a game of skittles at the "Flying Horse" he was seen to be in possession of a considerable amount in gold, silver and notes. All night a strong light was seen in his workshop, and next evening the blaze was so bright that neighbours feared the building was catching fire. They forced an entry and found him burning a large piece of flesh. Some articles belonging to Mr. Paas were discovered in the room, a few charred bones in the grate, and two thighs and a leg hidden in the chimney. At the assizes Cook, who had been arrested at Liverpool attempting to sail for America, pleaded guilty to murder, and on the 10th August, 1832, he was hanged in front of Leicester Gaol.

**August 11.**—Owing to the particular atrocity of his crime, Cook was condemned to be hung in chains after his execution, a practice then becoming obsolete. The head was shaved and tarred to preserve it from the action of the weather, and in the afternoon of the 11th August the body, dressed as at the time of death and firmly fixed in irons to keep the limbs together, was carried to Saffron Lane not far from the Aylestone Toll Gate and suspended from a gibbet 33 feet high.

**August 12.**—The following day, the 12th August, was a Sunday, and thousands of idlers were attracted to the spot by the barbarous exhibition. The whole business caused considerable annoyance to residents in the neighbourhood and such strong representations were made to the authorities that two days later instructions came from the Home Office for the removal of the gibbet, and Cook's body was subsequently buried at Leicester.

**August 13.**—After midnight on the 13th August, 1818, Mr. Baron Garrow arrived at Gloucester to hold the assizes. The commission day was the 12th, and accordingly the question arose whether his authority to open the commission had not expired. The future Lord Campbell, then a barrister on the circuit, wrote his father a lively account of "the scrape we have got into by Garrow not arriving here in time to open the commission. Such a thing I believe has never happened since circuits were established in England, and what the result will be it is impossible to tell. The under-sheriff was despatched to consult the Lord Chancellor, but upon this point I apprehend his lordship will feel considerable *doubt*." He describes his ride from Monmouth. "I never enjoyed anything more. The night was clear, the moon shone bright, there was a fresh breeze, and we passed through the far-famed scenery of the Wye. We reached Gloucester a little before one, and found that the judge had got here only a few minutes before us. This was no great matter of surprise, for we had passed him on the road where it was as level as a bowling green, going with his four horses at a foot's pace, and he did not pass us again till within about seven miles of Gloucester. Whether he was not aware of the necessity of being here before twelve o'clock, or whether he had gone to sleep, or what was the cause of his dilatoriness, I am wholly at a loss to explain."

### DEAF TO WARNING.

A letter in one of the Sunday newspapers lately drew attention to the difficulties of the deaf in the bombing, since they cannot hear the sirens or the flying bombs. They have, however, the advantage of not being startled by false alarms. That at any rate is suggested by an experience of Lord Monboddo, a famous Scottish judge in the eighteenth century, while on one of his visits to London. He was witnessing a trial in the Court of King's Bench when a cry was raised that the roof was giving way, and judges, counsel, solicitors and general public made a spontaneous rush to get out. Lord Monboddo, however, sat quietly in his corner viewing the scene with attention and composure. Being extremely deaf, he had not appreciated the cause of the tumult, and, indeed, the alarm was a false one. When asked why he had not tried to escape like everybody else, he replied that he had supposed it was an annual ceremony, with which, as an alien to English laws he had no concern, but which he considered it interesting to witness as a remnant of antiquity.

# Points in Practice.

*Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.*

### Collision with Army Cyclist.

*Q.* An Army motor cyclist knocked down and injured the child of a client. I have been in correspondence with the Assistant Director of Claims, but so far without result except a denial of liability. I shall be glad to know—

(1) Whether the limitation of one year will apply to this claim.

(2) If a writ has to be issued, against whom ought it to be framed, and whether there is any special procedure in a case of this kind.

*A.* (1) The limitation of one year will apply.

(2) The writ should be issued against the cyclist personally. The Treasury Solicitor will defend, apart from which there is no special procedure.

# The Law Society.

## ANNUAL GENERAL MEETING.

The annual general meeting of The Law Society was held at Chancery Lane on the 7th July, with the President, Sir Ernest Bird, in the chair.

Mr. A. C. Morgan was elected President, and Mr. H. M. Foster Vice-President for the ensuing year.

Mr. A. C. MORGAN, in thanking the Society for conferring this honour upon him, said he would do his best to maintain the high standard of his predecessors. He had long recognised that it was essential that the President should have not only the support of his colleagues on the Council, but also the sympathetic understanding of the Society, in that, whatever his personal shortcomings might be, it was the President's sole aim to serve the best interests of the profession as he saw them. He congratulated Sir Ernest Bird on the honour of knighthood recently received, and he was glad to think he would have so level-headed a colleague as Mr. Foster as Vice-President.

The following members were elected unopposed to the Council: Mr. A. G. T. Brown, Mr. W. C. Crocker, Mr. F. J. F. Curtis, Mr. A. J. Driver, Mr. A. F. Brownlow fforde, Mr. S. C. T. Littlewood, Mr. E. T. Maddox, Mr. R. Marshall, Sir Philip H. Martineau, Mr. William R. Mowll, Mr. L. E. Peppiatt, Mr. G. F. Pitt-Lewis and Mr. I. D. Yeaman.

Mr. R. E. Yeabsley, Mr. T. E. St. C. Daniell and Mr. C. E. Green were elected as auditors.

The President formally moved the adoption of the accounts as printed.

Mr. A. C. MORGAN, in seconding the adoption of the accounts, said the finances of 1943 had gone according to plan, but as that phrase might possibly be a little suspect he would add two or three words. The plan was a war-time and a troublesome and unwelcome plan, which assumed an excess of expenditure over income, and a resort to dwindling reserves. The accounts for 1944 might well present greater difficulties. There was still a deficit on the Society's account on the head of the Services Divorce Department of something like £3,500, due to the inevitable time-lag between the establishing of a unit of the department and the full functioning of that unit, and that sum constituted nearly half the deficit of the year on the Society's account. The development of this department had been remarkable and extremely rapid, but this deficit should right itself, and, indeed, by the end of 1943 there were outstanding considerable transfers which might have been made from the poor persons account to the Society's

account. These transfers would have wiped out this time-lag deficit, but they had not, in fact, been made by the end of the Society's financial year.

Turning to other details of the Society's account, he noted a new and adequate item of revenue in the compensation fund to meet the expenses of the collection of contributions and the administration of the fund.

As regards the articled clerks' account, the main feature was that establishment charges for accommodation against this account were less by over £2,200, owing to the accommodation having been taken over by the Services Divorce Department.

The balance sheet did not call for any comment beyond that appearing in the report.

The PRESIDENT, in moving the adoption of the annual report, said he was in a little difficulty as to what course to take as he had before him an address which he was prepared to deliver if the meeting so wished. In view, however, of the undesirability, in such times as these, of long speeches and long meetings, and of the fact that they were under glass, he suggested his speech might be taken as read, on the footing that it would be printed and published.

On the motion of Mr. A. King-Hamilton it was resolved that the address be taken as read.

The PRESIDENT, in the course of his address, said their thoughts rightly turned in the first place to the contribution the profession had made, and was making, directly towards the war effort. The Roll of Honour was continually mounting, though happily it had not yet reached the proportions it attained in the war of 1914–18. Nevertheless, 227 solicitors and 146 articled clerks had been killed in action, and 35 solicitors and 12 articled clerks posted as missing; 150 solicitors and 97 articled clerks were prisoners of war. To the relatives and friends of all those in sorrow and anxiety they tendered their deep sympathy. The report showed how large a proportion of members of the profession was in the fighting services, and the record of awards for gallantry was one of which they might justly be proud.

Tribute must be paid to two members of the Council who had passed on during the year—Mr. Stephen Roxby Dodds, of Liverpool, and Mr. William Davies, of Llanelly. Mr. Dodds had been elected a member of the Council in 1939, and had taken a prominent part in the life of Merseyside. In the nature of things it had not been possible for him to attend many meetings of the Council or its committees, but he had evinced much interest in the work of the Military Service (Deferment) Committee. Mr. William Davies, who had died very suddenly only a few weeks ago at the early age of fifty-nine, was well known in the public life of Llanelly. It might truly be said of him that he was incapable of sparing himself in the service of others, and his enthusiasm was an inspiration. The Council deeply regretted the loss of these two friends to whom they had hoped to look for help and advice for many years to come.

Turning to the report, it would be seen under the heading of "National Service" that the deferment procedure for solicitors and their clerks, whether male or female, had proceeded steadily, and had on the whole worked well. The deferment panels had also been called upon to deal with applications for release from the Forces which had been far from easy. The whole profession should be deeply indebted to the gentlemen who sat on these panels throughout the country for the care they had devoted to what was really a thankless and unenviable—though none the less very necessary—task.

The post-war aid proposals were going forward, and the Society continued to do its best to lighten the lot of solicitors and articled clerks who were prisoners of war. Members of the Council had given evidence before various departmental committees—those on further education and training, on the recruitment of legal staffs in Government offices, on rent restrictions and on company law reform. These were all subjects of importance.

One of the heaviest tasks of the Council during the year had been the preparation of the new Solicitors' Accounts Rules and the Solicitors' Trust Accounts Rules. With a view to obtaining the comments of the provincial law societies and the profession as a whole, members had been circulated a year ago, and the observations and helpful suggestions that were received had been carefully examined and in the result a number of amendments had been made in the rules as originally drafted. The rules had now been made by the Council and, in respect of the Accounts Rules, had received the necessary approval of the Master of the Rolls. Both sets would come into force on 1st January, 1945, so that there should be ample time in which members of the profession could make themselves familiar with them. It was proposed that copies should be sent to every practising solicitor, accompanied by a detailed explanatory memorandum which it was hoped would assist in clarifying them. They were, as a matter of fact, by no means as complicated as at first sight might appear. In a nutshell, they provided that clients' money must be kept in a separate banking account, and that trust moneys which a solicitor received not as solicitor but as sole trustee or as trustee of a fund of which his only co-trustees were a partner, clerk or servant, must be paid at the solicitor's option either into his clients' account or into a separate trust account.

While it was easy thus to state in general terms the effect of the rules, the actual drafting of them had been a difficult matter. In that connection a debt of acknowledgment was due to Mr. Webster, who had succeeded Sir Harry Pritchard as Chairman of the Parliamentary Committee, for his able and valuable services.

Grants in full had been made from the compensation fund in respect of every properly substantiated claim up to £600, and in the case of larger claims substantial grants had been made on account, leaving the balance to rank for further consideration in due course. Moreover, greater liberality had been shown in all cases in which exceptional hardship had been proved. Should any practising solicitor desire to see the accounts of the compensation fund, which was not one of the Society's accounts properly so called, they were available for inspection. The Council had not expected that the fund would be brought into operation without the protection to be afforded to it by the annual inspection of accounts for which provision was made by s. 1 of the Solicitors Act, 1941. Unfortunately, however, Parliament had postponed the date upon which that section was to become effective until such time as the Lord Chancellor might fix after the conclusion of the present emergency. Nobody could tell when that might be, but it would certainly be the Council's endeavour to secure the benefit of the section at the earliest possible moment whenever a sufficient number of accountants was available.

Representations to secure an increase in the remuneration of solicitors had been successful, and orders had been made by the appropriate authorities with a view to carrying this decision into effect. Following further representations the Lord Chancellor had made the Commissioners for Oaths (Fees) Order, 1944, under which commissioners' fees were increased from 2s. to 2s. 6d. for an affidavit or statutory declaration, and from 1s. 4d. to 1s. 6d. for an exhibit.

The work of the poor persons committees had gone steadily ahead. The task of maintaining the organisation during these difficult war days had been far from easy. The fact that the profession had disposed of even more cases than during pre-war years reflected the greatest credit upon it and upon all who had participated in the work, whether as members of committees or on the rotas of counsel or solicitors.

The Council noted with satisfaction that the Roche Committee, set up for the purpose of inquiring into the methods of appointment and conditions of service of clerks to justices, had indicated its views that it was desirable that those appointed to hold these offices should be equipped with professional qualifications. The Roche Report criticised the abuses of what might be called the "special circumstances" provision under which an assistant without legal qualifications could become a magistrates' clerk after fourteen years of service as an assistant. Although it was satisfactory that 748 out of the 842 justices' clerks in the provinces were solicitors, the Council could not view with equanimity the fact that of the 58 magistrates' clerks who held whole-time appointments only 32 were solicitors.

It was to be hoped that, pending the legislation that was promised, the Home Office, when it was asked to confirm the appointment of justices' clerks, would, before doing so, be at pains to satisfy itself that there were really "special circumstances" justifying the appointment of any persons without professional legal qualifications. The Council were glad to observe that the Roche Committee recommended that the clerks in the Metropolitan magistrates' courts should in future be required to possess these qualifications.

When the Council gave evidence before the Roche Committee, they stressed the view that the work of the office of magistrates' clerk was in fact solicitor's work, and that in their opinion it was desirable that solicitors only should be appointed to that office. Unfortunately the committee did not in its entirety accept that view. A minority—four in number—wished to provide that admission as a solicitor should be a necessary qualification throughout the country for the reason that they considered the training of a solicitor was more suitable for the work of justices' clerk, having regard to the fact that, while under articles and subsequently, he gathered experience in office routine and management, bookkeeping and accounts as well as in general legal business. It was further pointed out that solicitors could obtain additional valuable experience by becoming an assistant to a justices' clerk, whereas the Consolidated Regulations of the Inns of Court prohibited barristers and Bar students from acting in that capacity. The majority of the committee, on the other hand, while recognising that the training of a barrister would normally prepare him for a different career, and believing that justices' clerks would in the ordinary course continue to be drawn mainly from the solicitors' profession, considered that it would be unwise unduly to narrow the field by limiting it to one branch only of the legal profession, and were therefore of opinion that barristers of seven years' standing and who otherwise possessed the requisite legal experience should be included.

The Council did not regard as satisfactory the decision to allow barristers to remain eligible for appointment as justices' clerks. There were many legal appointments open to barristers which were not available to solicitors, and it seemed to the Council to be unfair to their branch of the profession that where the public interest demanded the appointment of a man with the training which a solicitor received—so different from that of a barrister—an attempt should be made to retain a right of appointment for members of the Bar merely because they had been eligible in the past. The Council hoped that when legislation arising out of the Roche Report came before Parliament, the views of the minority and not those of the majority of the committee in this respect would prevail.

The committee's views with regard to the proposed qualifications made interesting reading. The Council had, for example, been impressed by para. 115, where the committee drew attention to some of the duties that fell upon the clerk, such as relations with the probation officer, and the fact that he ought to be familiar with various forms of treatment, whether for juvenile offenders in remand homes, probation hostels, approved schools, or for older offenders in Borstal institutions and in prisons.

In this state of affairs and as the outcome of the report of the Roche Committee the Council had decided to add an additional optional paper at the Final Examination designed specially to meet the needs of clerks to magistrates.

A word should be said about the status of Chancery Masters and the effect upon that status of the discrimination that had been made between their salaries and those of the King's Bench Masters. Until 1901 the latter were selected from solicitors as well as barristers. It was, however, recognised that the requisite qualifications for a Chancery Mastership were in the main only to be found among practising solicitors, and in 1901 an arrange-

ment was made to which statutory effect was given in 1925 under which barristers only were to be appointed to King's Bench Masterships and solicitors to Chancery Masterships.

In 1937 the salaries of the King's Bench Masters were increased, but in spite of the representations of the Council and others that the masters of the Chancery Division should be placed on an equal footing in that regard, this was not done—notwithstanding the fact that the salaries of the two sets of masters had for nearly one hundred years been the same and that the respective masterships had been regarded as offices of equal rank. The Council, however, were then informed that the matter would be borne in mind and receive further consideration at some more opportune moment.

During the current year the Council had again made representations to the Lord Chancellor urging that the discrimination in status and salaries was unfair, and that the latter should be increased to that which other masters of the Supreme Court received, but the Council were once again informed that the moment was inopportune. The Council felt strongly in respect of this matter, and considered that what amounted to an injustice to the solicitors' branch of the profession should be remedied without further delay. They took the view that, without justification, undue preference had been shown to officers appointed from members of the Bar as against those appointed from the solicitors' profession, and that there had in fact been a discrimination in favour of the former which, to say the least, was not warranted by what had been the practice of a century. The Council had ventured to point out to the Lord Chancellor that hitherto solicitors of experience had applied for and been appointed to Chancery Masterships for the reason that they had been prepared to make certain sacrifices in their income in the knowledge that they had accepted what was probably the highest judicial office open to their branch of the profession, and that this incentive might well be removed if a Chancery Mastership was to be regarded as one of lower status than that of the King's Bench. There for the moment the matter rested, but it would not be lost sight of.

With regard to the committee recently appointed under the chairmanship of Lord Rushcliffe to inquire as to the facilities existing in England and Wales for giving legal advice and assistance to poor persons, the subject was no doubt one of enormous public interest, upon which questions had been asked in Parliament, and there had been considerable correspondence in the press. The Council had not been taken by surprise. Some two or three years ago they foresaw that after the war substantial changes would be necessary in the form in which legal services were rendered to less well-to-do members of the public. They had for some time past been working steadily upon a scheme which it was hoped would prove helpful from the point of view of the public as well as that of the profession.

At the close of his address the President said he wished to thank particularly Mr. Lund, the Secretary, for the help extended to him during his year of office. Until he became President he had never appreciated the mass of problems with which every day and every hour the Secretary was confronted and called upon to deal.

The motion for the adoption of the annual report was carried unanimously, and the meeting terminated.

# Parliamentary News.

## ROYAL ASSENT.

The following Bills received the Royal Assent on Thursday, 27th July:—
Rural Water Supplies and Sewerage.
Isle of Man (Customs).
Agriculture (Misc. Provs.).
Food and Drugs (Milk and Dairies).
Gillingham Corporation.
Ascot District Gas and Electricity.
Wisbech Corporation.
Loughborough Corporation.

The following Bills received the Royal Assent on Thursday, 4th August :—
Consolidated Fund (Appropriation).
Education.
Herring Industry.
Housing (Temporary Provisions).
Validation of War-time Leases.
National Fire Service Regulations (Indemnity).
Derwent Valley Water.
Chesterfield and Bolsover.
Anglesey County Council (Water, etc.).
Middlesex County Council.

## HOUSE OF LORDS.

Liabilities (War-time Adjustment) Bill [H.L.].
Read Second Time. [1st August.

Diplomatic Privileges (Extension) Bill [H.L.].
Read Third Time. [27th July.

## QUESTIONS TO MINISTERS.

### War Damage Repairs.

Lieut.-Colonel Dower asked the Chancellor of the Exchequer whether, after £100 has already been expended on war damage repairs without licence within twelve months and fresh war damage occurs, his regulations permit further repairs to be carried out without licence.

Mr. Hicks : I have been asked to reply. Where the first aid repairs are carried out by the local authority—and these constitute the great majority of cases—no licence is required. Where, however, they are carried out by a private individual, Defence Regulation 56A requires that a licence shall be obtained beforehand unless the work is done in circumstances of emergency which rendered it impracticable to obtain a licence. I can assure the hon. member that in all such cases the Ministry of Works will put a broad interpretation on what constitutes " circumstances of emergency," if they are informed as soon as practicable of the work that has been put in hand. [1st August.

# Rules and Orders.

S.R. & O., 1944, No. 894/L.35.

SUPREME COURT, ENGLAND—Procedure.

The Rules of the Supreme Court (No. 3), 1944. Dated July 28, 1944.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules of Court under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925.†

1. The following amendments shall be made in Order 55E (which relates to proceedings under the Pensions Appeal Tribunals Act, 1943) :—

(1) The following paragraph shall be substituted for paragraph (1) of Rule 2, namely :—

" (1) An application to the nominated Judge for leave to appeal shall not be made unless an application has been made to the Tribunal and has been refused, and shall be made within twenty-eight days of the date of the decision of the Tribunal to refuse leave to appeal, and may be made ex parte."

(2) the following sub-paragraph shall be substituted for sub-paragraph (c) of paragraph (2) of Rule 2, namely :—

" (c) the date of the decision of the Tribunal to refuse leave to appeal :"

(3) The following paragraph shall be substituted for paragraph (4) of Rule 2, namely :—

" (4) If the nominated Judge so directs, the Chairman of the Tribunal shall furnish to the nominated Judge a statement in writing of the reasons for the decision of the Tribunal to refuse leave to appeal, and where a statement is so furnished a copy thereof shall be sent from the Crown and Associates' Department to the applicant."

2. In items Nos. 198 and 200 in Appendix N to the Rules of the Supreme Court, 1883 (which items relate to disbursements made to a Commissioner for Oaths) the amounts to be allowed shall be omitted and in lieu thereof the following words shall be added to each item :—

" the amount properly paid to the Commissioner ".

3. These Rules may be cited as the Rules of the Supreme Court (No. 3), 1944.

Dated the twenty-eighth day of July, 1944.

*Simon*, C.

We concur,

*Caldecote*, C.J.

*Greene*, M.R.

* 2 & 3 Geo. 6, c. 78. † 15 & 16 Geo. 5, c. 49.

# Notes and News.

## Honours and Appointments.

The Lord Chancellor has made the following appointments :—

Mr. Ernest Charles-Jones, Registrar of the Tredegar, Abertillery and Bargoed County Court and District Registrar in the District Registry of the High Court of Justice in Tredegar to be, in addition, Registrar of the Abergavenny, Chepstow, Monmouth, Newport (Mon.) and Pontypool and Blaenavon County Courts and District Registrar in the District Registry of the High Court of Justice in Newport (Mon.) ; and Mr. Thomas Marchant Harries, Registrar of the Aberdare and Mountain Ash and Pontypridd, Ystradfodwg and Porth County Courts and District Registrar in the District Registry of the High Court of Justice in Pontypridd to be, in addition, Registrar of the Merthyr Tydfil County Court and District Registrar in the District Registry of the High Court of Justice in Merthyr Tydfil. Both appointments take effect from the 1st August, 1944.

Mr. Herbert David Samuels, K.C., has been appointed Recorder of Bournemouth in place of Mr. John Lhind Pratt, now a Metropolitan Police Magistrate.

Mr. Ronald Sykes, Clerk of Assize on the North-Eastern Circuit since 1942, is to succeed the late Mr. Horace Marshall as stipendiary magistrate of Leeds. Mr. Sykes was called by the Middle Temple in 1915.

## Notes.

Mr. J. F. F. Platts Mills, barrister-at-law, is now a voluntary mining trainee at the Askern Colliery Training Centre, near Doncaster.

In the Probate, Divorce and Admiralty Division the term opened with a list of 2,692 cases. Although some of the judges of that Division have been on circuit, nearly 1,720 matrimonial causes were heard, leaving just over 970 of the original number undisposed of. But during the term some 250 " Service " cases have been brought into the list at short notice and have been heard. Adding those 250 to the original number, there are about 1,200 cases carried over. During the vacation a judge of the Divorce Division will sit each week to hear urgent cases.

# Notes of Cases.

## HOUSE OF LORDS.

### Barclays Bank, Ltd. *v.* Attorney-General.

Viscount Simon, L.C., Lord Thankerton, Lord Macmillan, Lord Wright and Lord Simonds. 27th July, 1944.

*Revenue—Estate duty—Life policies settled—Premiums paid out of the income of settled funds—Settlor parts with all interest in settled funds—Whether policies "kept up" by settlor—Finance Act*, 1894 (57 & 58 *Vict. c.* 30), *s.* 1 (2) (*c*).

Appeal from a decision of the Court of Appeal.

Viscount D had effected two policies on his own life. By a settlement dated the 15th August, 1922, he assigned these policies to the appellants as trustees to be held upon trust for his family. At the same time he assigned certain investments to the trustees, the income from which was to be applied in paying the premiums on the policies, and, subject to such payment, on the trusts of the settlement. By an appointment of the 15th May, 1930, and a further settlement of the same date, the settlor exercised irrevocably certain powers under the settlement of 1922 in favour of his family. From that date he had wholly divested himself of all right and interest in the policies and the investments held by the trustees, and these were held for the beneficiaries under the trusts. The settlor died on the 5th September, 1934, and the trustees then received £78,675 payable under the policies. Estate duty was claimed in respect of these moneys under the combined operation of the Finance Act, 1894, s. 2 (1) (*c*), the Customs and Inland Revenue Act, 1881, s. 38, and the Customs and Inland Revenue Act, 1889, s. 11 (1), which provide that property passing on the death of a deceased shall be deemed to include "money received under a policy of assurance effected by any person . . . on his life where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him where the policy is partially kept up by him for such benefit." The trustees conceded that duty was payable under s. 2 (1) (*d*) of the Act of 1894. The Court of Appeal (Scott and MacKinnon, L.JJ., Luxmoore, L.J., dissenting) held that estate duty was payable under s. 2 (1) (*c*).

VISCOUNT SIMON, L.C., said that he agreed with the opinion of Lord Macmillan.

LORD MACMILLAN said that the contention of the Attorney-General was that, although the premiums had been paid by the settlement trustees out of trust income since 1922, nevertheless the policies had been throughout that period kept up by the settlor. His argument was that a policy was none the less kept up by the assured and the premiums none the less paid by him by reason of his having in advance made provision for the payment of the premiums. This argument found favour with Scott and MacKinnon, L.JJ., in the Court of Appeal, but was rejected by Luxmoore, L.J. In his opinion, Luxmoore, L.J., was right. To keep up a policy was to pay the premiums thereon as they fell due, and the person who paid the premiums was the person who kept up the policy. The funds which yielded the income with which the premiums in the present case were paid were no doubt originally provided by the settlor, but when the premiums were actually paid he had no right whatever in the income so employed. In no sense could it be said that when the settlement trustees paid the premiums it was the settlor who paid them, they paid them with their own trust moneys. You could not make payments out of moneys with which you had already parted. You could not keep up a policy with money which you had already given away. The appeal should be allowed.

The other noble and learned lords agreed in allowing the appeal.

COUNSEL: *Cyril King*, K.C., and *Wilfrid Hunt*; *The Attorney-General* (Sir Donald Somervell, K.C.), and *J. H. Stamp*.

SOLICITORS: *Waterhouse & Co.*; *Solicitor of Inland Revenue*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

## CHANCERY DIVISION.

### *In re* A Debtor (No. 2 of 1944). *In re* A Debtor (No. 3 of 1944).

Cohen and Evershed, JJ. 17th July, 1944.

*Bankruptcy—Petition—Application to stay proceedings—Inability to pay attributable to war—Conditions of stay—Courts (Emergency Powers) Act*, 1943 (6 & 7 *Geo.* 6, *c.* 19), *s.* 1 (5).

Appeals from a decision of the registrar of Winchester County Court.

The debtor, in April, 1942, purchased certain milling assets and formed three companies to acquire and operate these assets. These transactions were financed by money borrowed from the petitioning company, which was secured by a debenture and certain monthly bills given by one of the companies and guaranteed by the debtor and his wife. Default having been made on certain of the bills, the petitioners obtained judgment against the debtor and also against his wife for the moneys due on such bills. On the 14th February, 1944, the petitioning creditors served a bankruptcy notice in respect of one such judgment on the debtor and a similar notice on his wife. The debtor and his wife failed to comply with such notices, and on the 10th March, 1944, bankruptcy petitions were filed against the debtor and his wife. Both gave notice of intention to apply for a stay of proceedings under s. 1 (5) of the Courts (Emergency Powers) Act, 1943. On the 21st April the registrar made an order staying the proceedings under the petitions so long as the debtor and his wife should pay to the petitioning creditors the amount of their debts by four equal monthly instalments. The petitioning creditors appealed.

COHEN, J., delivering the judgment of the court, after holding that they ought not to disturb the registrar's finding that the debtors had established that their inability to pay was due to circumstances arising out of the war, said they turned therefore to the question whether the condition on which the registrar granted a stay could be sustained. They were of opinion it could not. The provision in the registrar's order for the payment of the petitioning creditors' debt by four instalments amounted to a preference of the petitioning creditors over the other creditors. This view was supported by the unreported decision in *In re a Debtor* (*No. 2 of* 1943). In that case the court had imposed conditions directed to preventing the debtor dissipating his assets. They should impose similar conditions in the present case. The details were a matter for discussion. What they visualised was that a special account should be opened in the name of a responsible person into which the debtors should pay a certain sum each month and also any moneys which they might receive from a realisation of their assets. Orders of the registrar varied.

COUNSEL for the petitioning creditors: *G. F. Kingham*; the debtor appeared in person, his wife did not appear.

SOLICITOR: *Sidney Pearlman*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

## KING'S BENCH DIVISION.

### Greenfield *v.* L.N.E.R. Co.

Charles, J. 11th May.

*Emergency legislation—Engine driver killed in railway accident—Negligence of employers in failure to warn of bomb crater in track—Whether a "war injury"—Personal Injuries (Emergency Provisions) Act*, 1939 (2 & 3 *Geo.* 6, *c.* 82).

Action under the Fatal Accidents Acts, 1846–1908, and the Law Reform (Miscellaneous Provisions) Act, 1934, by a widow and administratrix of a deceased engine driver who had been in the employ of the defendant railway company at the time of his death. The railway engine which he was driving for the defendants immediately before his death overturned in a bomb crater caused by an enemy bomb which had exploded thirty-five minutes previously. The defendants admitted that they had been negligent but pleaded that s. 3 of the Personal Injuries (Emergency Provisions) Act, 1939, which excludes the payment of workmen's compensation or other civil compensation for a war injury payable for negligence, nuisance or breach of duty, other than that payable under the Act. "War injuries" are defined by s. 8 of the Act as meaning physical injuries caused *inter alia* by the discharge of any missile or the use of any weapon or the doing of any other injurious act by the enemy.

CHARLES, J., cited *Yorkshire Dale Steamship Co., Ltd.* v. *Minister of War Transport* [1942] A.C. 691, per Viscount Simon, L.C., at pp. 697, 698, and said that he had to consider what was the dominant effective or proximate cause. His lordship further cited *Taylor* v. *Sims and Sims* (1942), 2 All E.R. 375, per Lewis, J., at p. 380, and distinguished *Smith* v. *Davey, Paxman and Co.* (*Colchester*), *Ltd.* (1943), 1 All E.R. 286, in which there was definitely no causal nexus between the enemy act and the final effective injury because there a shell had been found and then passed from hand to hand, going through, as Scott, L.J., said, "a series of fortuitous interventions by curious boys or men acting for their own purposes." Charles, J., said that he had come to the conclusion that this accident, in spite of the fact that there were shortcomings on the part of the servants of the railway company, who perhaps should not have sent the train along at all, none the less resulted in war injuries. Judgment for the respondents.

COUNSEL: *F. W. Beney*, K.C., and *W. A. L. Raeburn*; *G. J. Lynskey*, *K.C.* and *J. Alun Pugh*.

SOLICITORS: *Kenneth Brown, Baker, Baker*; *W. Hanscombe*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

# War Legislation.

## STATUTORY RULES AND ORDERS, 1944.

E.P. 836. **Containers and Straps** (No. 4) Order, July 24.
E.P. 865. **Food.** Pickles and Sauce Order, July 20.
E.P. 846. Food Rationing. Meat (Rationing) Order, July 18.
E.P. 841–2 (as one publication).
841. Food. Preserves Order, July 17.
842. Food Standards (Preserves) Order, July 17.
E..P. 768. **General Furniture** (Control) Order, July 14.
E.P. 835. **Limitation of Supplies** (Misc.) (No. 23) Order, July 24.
No. 864. **Prevention of Fraud** Order, July 25, under s. 26 of Prevention of Fraud (Investments) Act, 1939, fixing the appointed day.
E.P. 786. **Proofed Garments** (Restriction) Order, July 24.
No. 893/S.44. **Protected Area** Orders (Nos. 5 to 7) Revocation Order, July 29.
No. 859/S.39. **Sheriff Court, Scotland.** Procedure. Act of Sederunt anent the introduction of a Photographic Process for copying Deeds and other Writings presented for Registration in the Sheriff Court Books and the Commissary Court Books.
No. 860/S.40. Sheriff Court, Scotland. Procedure. Act of Sederunt to simplify Registration in Commissary Court Books.
E.P. 834. **Utility Furniture** (Supply and Acquisition) (No. 4) Order, July 24.
No. 818. **War Damage** (General) Regulations.
No. 816. War Damage (Notification and Claims) Regulations, July 18.
No. 817/S.42. War Damage (Notification and Claims) (Scotland) Regulations, July 18.